

---

## MESSAGE.

---

EDMUND HEAD.

THE GOVERNOR GENERAL transmits, for the information of the Honorable the Legislative Assembly, copies of Despatches from Her Majesty's Secretary of State for the Colonies, and other documents, on the subject of the Hudson's Bay Territory.

Government House,  
Toronto, 16th March, 1858.

---

(Copy.)

DOWNING STREET,  
13th August, 1857.

No. 19.

SIR,—I have the honor to forward you two copies of the Report of the Select Committee of the House of Commons on the Hudson's Bay Company.

You will be so good as to give one copy to Chief Justice Draper, and make such use of the other as you may deem advisable.

I have, &c.,  
(Signed,)

H. LABOUCHERE.

The Officer  
Administering the Government  
of Canada.

---

(Copy.)

No. 9.

DOWNING STREET,  
22nd January, 1858.

SIR,—In sending for your consideration and that of your Council, a Correspondence which has recently passed between the Directors of the Hudson's Bay Company and this Department (Colonial Office to Hudson's Bay Company, 20th January, 1858; do. do. Hudson's Bay Company, 21st January, 1858; do. do.) on the subjects embraced by the investigation of a Committee of the House of Commons in the last year's session of Parliament, it is not necessary that I should add much to the information which that correspondence conveys.

The relations in which the Company is placed, both towards Canada and towards Her Majesty's Government in this country, have naturally attracted in no common degree the attention of the Canadian community, and they were also carefully investigated by the Committee to which I have referred.

It is the anxious desire of Her Majesty's Government to take the opportunity afforded by the approaching termination of the Company's license of exclusive trade over what is termed the Indian Territory, for placing these relations upon such a footing as shall be consonant with justice, and at the same time conducive to the satisfaction, and to the interests of the great Province under your Government.

It is for the purpose of promoting these objects that I have carried on the correspondence which I now transmit to you, and I make no question but that it will be considered in a similar spirit by the Legislature and people of Canada.

I do not propose to discuss the question of the validity of the claims of the Company in virtue of their charter, over the whole Territory known as Rupert's Land. Her Majesty's Government have come to the conclusion that it would be impossible for them to institute proceedings with a view to raise this question before a legal tribunal, without departing from those principles of equity by which their conduct ought to be guided. If, therefore, it is to be raised at all, it must be by other parties on their own responsibility.

With regard to the question of boundary, as distinguished from that of the validity of the charter, Her Majesty's Government are anxious to afford every facility towards its solution, a mode of accomplishing which is indicated in the correspondence, if such should be the desire of Canada.

But I trust that in any case, a machinery may be provided through the course now proposed, which will afford to Canada the means of obtaining any districts which she may require for the purpose of settlement, and to which she may be able to afford the benefits of administration and protection. The tracts claimed by the Company under its charter are conterminous on the North and West with the whole of that great Province which is now united under your Government. I therefore look to the gradual aggregation of such portions of these tracts as may be found available to that Province which contains within its limits the noble water communication afforded by the Lakes and the St. Lawrence to the Atlantic.

I recommend this important subject to the early consideration of yourself and your advisers. Her Majesty's Government can have no other wish regarding it than, consistently with the principles of good faith, to promote the prosperity and consult the feelings of the people of Canada in this matter, as well as to provide for the security of law and order in these vast regions, in the maintenance of which Canada has herself so deep an interest.

I have, &c.;

(Signed,)

H. LABOUCHERE.

Governor,  
The Right Honorable Sir E. W. Head, Bart.,  
&c. &c. &c.

(Copy)

Downing Street, Jan. 20, 1858.

SIR,—Her Majesty's Government have had under their consideration your letter of the 22nd December, 1856, containing an application on behalf of the Governor and Committee of the Hudson's Bay Company, for a renewal of their license for exclusive trading with the Indians in the North Western Territories of America. They have also, since the receipt of that letter, paid full attention to the Report of the Select Committee of the House of Commons appointed during the last Session of Parliament to consider the state of the British Possessions under the administration of the Hudson's Bay Company, and I have now to acquaint you,

by direction of Mr. Secretary Labouchere, with the result of their deliberations on the whole subject.

2. They are disposed to advise Her Majesty to execute the powers vested in Her by the Act 1 and 2, Geo. IV. c. 66, by renewing the existing license of the Hudson's Bay Company for the further term of twenty-one years from its approaching expiration on the 30th May, 1859, on the following conditions:

3. The reservation, as in the present License, of any Territories which may be formed by Her Majesty's Government into Colonies.

4. Vancouver's Island to be excepted from the License as already constituted into a Colony. On the subject of this Island I am to refer you to another letter of even date herewith, in which the views of Her Majesty's Government in relation to it are communicated to you.

I am further to state that Her Majesty's Government consider it very desirable to ascertain by the decision of some competent authority, the boundary between the Province of Canada and the Territories claimed by the Company under their charter.

It has been suggested by Her Majesty's law advisers that this might be effected through the intervention of the judicial Committee of the Privy Council on their being moved to entertain the question. You stated in your letter, addressed to me on the 18th of July last, that the Directors of the Company were prepared to recommend to their shareholders a concurrence in this course. But I have no authority to state that the Province of Canada is also prepared to concur in it unless allowed at the same time to discuss the farther validity of the charter itself, a question which, on public grounds, Her Majesty's Government do not consider themselves authorised to raise. If, therefore, any parties in Canada propose to take measures towards contesting the Company's rights to the full extent before a legal tribunal, Her Majesty's Government must leave them to take that course on their own responsibility. If, on the other hand, Canada thinks it expedient to agree to the course now proposed, namely, that of trying the question of boundary alone with the consent of the Hudson's Bay Company, Her Majesty's Government will afford every facility in their power for its determination. It is, therefore, Mr. Labouchere's intention, in the first place, to submit this proposal to the option of the Colony.

6. But supposing that no such proceedings were taken, and that the colony declines to contest the naked question of boundary in the manner suggested, Mr. Labouchere is of opinion that the objects recommended by the Committee may be attained by another course. He will then be prepared to propose to Canada, and to the Company on the part of Her Majesty's Government, as a further condition for the renewal of the license, that the Company should surrender to the Crown such portions of the Territory now claimed by it under the Charter as may be available to and required by Canada for purposes of settlement.

7. It is stated in the report that the districts likely to be required for early occupation are those on the Red River and Saskatchewan. If that should be the case, the portion of Territory thus generally indicated, should be rendered free for annexation to Canada. Such annexation to take place, whether in this or any other direction when Canada has made a road or any other line of communication connecting the Territory she requires; and when Canada has given satisfactory evidence of her intention to take steps for laying out townships, and settling and administering the affairs of these districts. Thus the annexation might be gradual in case it should be found to suit the convenience of the several parties interested.

8. For the purpose of ascertaining the satisfactory performance by Canada of the terms thus required, the period when such annexation should consequently commence, and the manner in which it should be carried into execution, Mr. Labou-

chere would propose the appointment of a Board of three commissioners, one to be nominated by the Province of Canada, one by the Company, and one by Her Majesty's Government.

9. The same Board should be authorized to consider and report on the following question, namely,—the amount of pecuniary compensation which, under all the circumstances of the case, may become justly payable to the Company in consequence of such contemplated annexation, and in respect of property which they may be required to surrender.

10. The Commissioners should be instructed to dispose of further questions connected with the transfer which, in the course of these proceedings, it may appear desirable to refer to them.

11. Her Majesty's Government have further to propose that, if it should at any time be made known to them, that there is a good reason to believe that mining operations or fisheries may be advantageously conducted in any portion of the territory held by the Hudson's Bay Company under their charter, facilities should be afforded to Her Majesty's subjects for engaging in these pursuits within limited districts. For this purpose, it would be necessary that Her Majesty's Government should be authorized to grant licenses or leases, or in some other manner which may be arranged by mutual consent, to place the parties engaged to prosecute such undertakings, in possession of the land required for the purpose, any territorial rights of the Company notwithstanding. On the other hand, it should be fully understood that Her Majesty's Government will not grant any such facilities, unless the parties applying for them give to Her Majesty's Government and the Company substantial proof of their competency, and of the *bona fide* nature of their intentions; nor unless proper security be taken against the interference of such parties with the fur trade of the Company with the Indians. The mode of carrying into execution these arrangements would be matter for subsequent consideration if the Company should agree to the principles now suggested.

12. If the Company should signify through yourself their willingness to consent to these proposals, Her Majesty's Government will proceed forthwith to submit them to the local Government of Canada for their consideration, and in the event of their concurrence, they will be prepared to take the necessary means for carrying them into effect.

I have, &c.,

(Signed,) H. ERIVALE.

John Shepherd, Esq.

(Copy.)

Downing Street,  
20th January, 1858.

SIR,—With reference to my letter of this day's date respecting the proposed renewal of the Hudson's Bay Company's license of trade in North Western America, I am further directed by Mr. Labouchere to inform you that in pursuance of the recommendation of the Committee of the House of Commons, referred to in that letter, it is the intention of Her Majesty's Government to advise the exercise of the power reserved to the Crown by the existing grant of Vancouver's Island, to re-purchase and take that Island from the Hudson's Bay Company, at the approaching expiration of the Company's present trading license, namely on the 13th May, 1859.

I am therefore to request that the Directors will, at their earliest convenience, furnish Her Majesty's Government with a statement of the sums for which they may claim re-payment as "laid out and expended by them in and upon the said

Island and premises, and as the value of their establishments, property, and effects thereon,' according to the terms of the grant.

I have, &c.,

(Signed,) H. MERIVALE.

John Simpson, Esq.

(Copy.)

Hudson's Bay House,  
21st January, 1858.

SIR,—I have the honor to acknowledge the receipt of Mr. Merivale's letter of the 20th instant, communicating the result of the consideration which Her Majesty's Government had given to my letter of the 22nd December, 1856, and adverting to the full attention paid to the report of the Select Committee of the House of Commons, which inquired last session into the state of the British possessions under the administration of the Hudson's Bay Company, detailing the conditions on which Her Majesty's Government are prepared to advise Her Majesty to renew the existing license for a further term of twenty-one years, and informing me that if the Company should signify their willingness to consent to these proposals, Her Majesty's Government will proceed forthwith to submit them to the Local Government of Canada for their consideration, and in the event of their concurrence, will be prepared to take the necessary measures for carrying them into effect.

In reply, I beg leave to state, that after full consideration with my Colleagues in the direction, we shall be prepared to recommend to our proprietary body :

1st. To agree to the reservation, as in the present license, of any territories which may be formed by Her Majesty's Government into colonies.

2nd. To agree to the proposed exception of Vancouver's Island from the license ;—and upon this subject we beg to refer you to the answer to the communication which you have forwarded to us, conveying the views of Her Majesty's Government in relation thereto.

3rd We concur in your suggestion that in the event of the Government of Canada declining to be a party to the proposed reference of the boundary question to the judicial committee of the Privy Council upon the footing which Her Majesty's Government are prepared to recommend ; and which this Company has already expressed their willingness to adopt, the objects recommended by the Committee of the House of Commons may be attained by another course, the detailed arrangements of which should be carried out under the supervision of three Commissioners, one to be appointed by the Crown, one by the Canadian Government, and one by the Hudson's Bay Company.

I trust, that the ready acquiescence of the Hudson's Bay Company in the plan proposed for meeting the requirements of the Canadian Government, will be accepted as an earnest of their desire to be on terms of harmony and friendship with their countrymen in Canada.

4th. In communicating this assent on the part of the Hudson's Bay Company, it is, however, right to notice that the territories mentioned as those that may probably be first desired by the Government of Canada, namely, the Red River and Saskatchewan districts—are not only valuable to the Hudson's Bay Company as stations for carrying on the fur trade, but that they are also of peculiar value to the Company, as being the only source from which the Company's annual stock of provisions is drawn, particularly the staple article of *Pemican*, a regular supply of which is absolutely necessary to enable the officers of the Company to transport their goods to the numerous inland and distant stations, and to feed and maintain

the people, both European and Indians, stationed thereat. It is proper, therefore, that I should draw your attention to the fact that the ultimate loss of those districts will most probably involve the Hudson's Bay Company in very serious difficulties, and cause a great increase of expense in conducting their trade. The Company assume that the Canadian Government will be responsible for the preservation of peace, and the maintenance of law and order in all the territories ceded to them, and that they will prevent lawless and dishonest adventurers from infringing from thence the rights of the Company over the remaining portions of their territories.

5th. With respect to the eleventh paragraph of your letter, in which it is proposed that "Her Majesty's Government should be authorised at any time to grant licenses or leases, or in some other manner which may be arranged by mutual consent, to place parties engaging to prosecute mining operations or fisheries in possession of the land required in any portion of our territory for the purpose, any territorial rights of the Company notwithstanding,"—assuming that the principles stated in the ninth paragraph, as applicable to cessions to Canada, apply equally to any cessions which may take place in virtue of the 11th clause, I beg to state that we shall be prepared to recommend our shareholders to concur in this proposal.

6th. In conclusion, allow me to refer to the sentiments expressed in the fifth and last paragraph of my letter of the 18th of July last, as explanatory of the continued views of myself and colleagues. We are willing to enter upon a new tenure of our engagements under the renewed license, upon being assured of the support of Her Majesty's Government, and of the cordial co-operation of the neighboring Government of Canada, in maintaining tranquillity and order among the Indian tribes, and protecting the frontiers of the whole adjacent British territories from foreign encroachment.

The interests of the Hudson's Bay Company, we are convinced, are closely united with the real prosperity of Canada, and we trust that the humane and beneficent objects of Her Majesty's Government will prosper under our united exertions.

I have, &c.,

(Signed) JOHN SHEPHERD,  
Governor.

Right Hon. H. Labouchere.

Hudson's Bay House,  
21st January, 1858.

SIR,—I have the honour to acknowledge the receipt of Mr. Merivale's letter of yesterday's date, communicating the intention of Her Majesty's Government in reference to Vancouver's Island colony, and in accordance with your request, a statement of the sums for which the Hudson's Bay Company may claim repayment, according to the terms of the grant, will be prepared and submitted as soon as possible.

I have, &c.,

JOHN SHEPHERD,  
Governor.

The Right Hon. H. Labouchere.

---

*To His Excellency the Right Honorable Sir Edmund Walker Head, Baronet, Governor General, &c., &c.*

---

The following report is respectfully added to the various despatches and communications heretofore written by me on the subject of my mission to England, having been drawn up in the hope of presenting a connected statement of the proceedings—while for elucidation and fuller details, I beg permission to refer your Excellency to all that has been previously submitted by me.

The instructions of the 20th February, 1857, with which I was honored, referred to the leading subjects which subsequently engaged attention; among them are the following:—

The duty of attending on the Parliamentary Committee, of watching over the interests of Canada by correcting erroneous impressions, and by bringing forward any claims of a legal or equitable kind which the Province might possess on account of its territorial position or past history.

This duty was limited by an express restriction to conclude no negotiation and assent to no definite plan of settlement affecting Canada, without reporting the particulars of the same, and the views entertained by me thereon.

The expediency of marking out the limits between the British possessions and the United States, was strongly pointed out, from the importance of securing the North West territory against sudden and unauthorised intrusion, as well as of protecting the frontier of the lands above Lake Superior, and about the Red River, and thence to the Pacific, so as effectually to secure them against violent seizure and irregular settlement, until the advancing tide of emigration from Canada and the United Kingdom might fairly flow into them, and occupy them as subjects of the Queen, and on behalf of the British Empire.

That any renewal of a license of occupation (if determined on at all) or any recognition of rights in the Hudson's Bay Company should be guarded by such stipulations as would prevent interference on their part with the fair and legitimate occupation of tracts adapted for settlement.

The importance of Vancouver's Island, as the key to all British North America on the side of the Pacific, was alluded to as being too self-evident to require any advocacy.

I lost no time after the receipt of those instructions in setting off for Europe. On my arrival in London, on the afternoon of the 9th March, I found that, owing to the vote on the Chinese war, Parliament was about to be dissolved, and that the Committee on the Hudson's Bay affairs and territory had held its last sitting on that day, and would merely report the evidence they had taken, the enquiry being incomplete and insufficient as the foundation of any report.

I certainly felt great momentary disappointment since I saw that my stay in London would be thereby greatly prolonged. But a little reflection and some information which I obtained as to the course the enquiry had taken, soon brought me to view the delay as likely to be an advantage, by affording time that might be put to a very profitable use.

My first interview with the Right Hon. the Secretary of State for the Colonies, gave no reason to apprehend any indisposition on his part to take a just view of the interests of Canada in the matter. His language, though general, was favorable, and I thought I could safely infer that any obstacles that might arise would not originate with him, however he might be affected by pressure and urgency from other quarters.

Enquiries in other places, together with a perusal of the evidence taken before the Committee (which Mr. Labouchere promptly communicated to me) led me to the conclusion that the only party desirous of maintaining things in their

present position was the Hudson's Bay Company, though, as I afterwards ascertained more distinctly, very different opinions were ascertained as to the course which it would be most wise to adopt in the future government of that portion of British Territory.

My first duty, therefore, appeared to be to take steps with a view to meet the resistance which the Hudson's Bay Company were opposing to any change. This resistance took, as I thought, two forms—one, resting generally on the rights claimed under their charter from Charles II.,—the other more particularly directed against the claims of this Province, by setting up an alleged impossibility arising from geographical and physical causes—to the Government of the territory being administered by Canada. The first was obviously to be met by an examination of the foundation on which they relied, the second by endeavoring to obtain more accurate knowledge of the formation and accessibility of the country lying between Lake Superior and Fort Garry, and by postponing any final arrangement until this should be fully investigated.

I was aware of the correspondence which took place in 1850 bearing upon the first of these points, and that the late Sir John Jervis (afterwards Chief Justice of the Court of Common Pleas) and Sir John Romilly (now Master of the Rolls) had reported their opinion that "having regard to the powers in respect of territory, trade, taxation, and government, claimed by the Hudson's Bay Company" the rights so claimed properly belonged to that Company. They had, however, accompanied this opinion with their advice that the questions should be referred to a competent legal tribunal for consideration and decision, and they suggested the Judicial Committee of the Privy Council as the tribunal best fitted for the discussion of the case. Her Majesty's Government adopted the advice, but, as they refused to have the proceedings carried on at the public expense, the matter was then dropped.

Impressed with the idea that a similar reference would receive the approval of the Government, and that it was on every account desirable that the validity of these claims should be submitted to the test of judicial investigation, I applied for and obtained leave to make searches among the public documents and State papers, where I hoped I should obtain some information respecting the original granting of the Charter, as well as some reliable account of the construction put upon it in times when no such questions had arisen as now presented themselves. Several points with respect to the Hudson's Bay Company's rights and claims, on which doubts had been suggested, might probably be elucidated by this enquiry, and materials might be found to narrow the pretensions set up by them.

But while engaging in this research, which proved much more long and laborious than I at first supposed, I felt it my duty, at an early date after my arrival in London, and as soon indeed as I had sufficiently reflected on the information which I could immediately gather, to submit for the consideration of your Excellency such views as up to that time impressed themselves on my mind on the subject, in order that your Excellency in Council might be in a situation to exercise your judgment upon them.

The enquiry before the Committee had taken a much wider range than fell within the limit of my instructions, but the information elicited in regard to the Indians, and the trade carried on by them with the Hudson's Bay Company, had a very important though a collateral bearing upon the preservation of British authority within, and the settling and government of the North West Territory. In my despatch of the 20th March, I pointed out the course which the evidence had so far taken, as well as some of the views and reflections to which it was calculated to give rise.



There seemed to be an almost settled conclusion that a change had become necessary—that the Hudson's Bay Company could not be permitted to maintain a territorial monopoly for their own benefit, to the exclusion of the rest of the Queen's subjects from the occupation and cultivation of such lands as were fitted for agricultural purposes; and with regard to Vancouver's Island, its value, in a political point of view, seemed so well understood, that there appeared no room for doubt that it was deemed inexpedient to suffer it to continue in the hands and under the control of that corporation.

As to the mainland, I gathered that the impression entertained by Her Majesty's Government was in favor of placing such portion of it as was fitted for settlement, to the west of the Rocky Mountains, under the control of the Colonial Government proposed to be established at Vancouver's Island; while as to such portion of it similarly fitted for settlement as lay to the eastward of that mountainous chain, there was a readiness to meet the views of Canada—by placing it under the control of the Government of this Province, of the practicability of opening communication between Lake Superior and Red River, and so to connect this more distant territory with Canada, under one general Administration, were established, also subject to the rights (whatever they were) of the Hudson's Bay Company—and to an adjustment of compensation for that which it might be found necessary to take from them.

Although conflicting opinions existed as to the mode in which the settlement and administration of affairs in this territory should be effected, the prevalence, as I have already stated, was in favor of an entire change of system, and I could anticipate an enquiry whether Canada would be disposed at once to assume the charge of settling and governing and (except as to foreign aggression) of maintaining peace in the territory indicated, accepting the burden of adjusting such claims as might appear on enquiry to be well founded, and if not, what other arrangements would be suggested in contemplation of its ultimate cession to her.

I endeavoured to point out to your Excellency, in my despatch of the 27th March, the question which I deemed of the most prominent importance, and I discussed therein, at some length, some of the leading considerations involved in them, and I submitted such conclusions as (so far as I could then perceive) I thought it would be for the interests of the Province to arrive at. As to the validity of the claims of the Hudson's Bay Company under their charter, I assumed the Government at home entertained the same views as to the propriety of a reference to the Judicial Committee of the Privy Council as had been expressed in 1850.

During the residue of the session of Parliament, and from the dissolution until after the elections, I had but little opportunity of communicating with any of the authorities on these points. I took, however, the earliest convenient occasion to ascertain, as well at the Colonial Office as elsewhere, what opinions prevailed with regard to them, and was surprised and disappointed to find that doubts had been suggested and difficulties raised to following out the course previously suggested by the law advisers of the Crown, and sanctioned by Earl Grey. It was intimated to me, that possibly the Judicial Committee might decline pronouncing any opinion upon the validity of the claims of the Company, when no parties were before them, whose right would be bound by their decision, and that it was more fitting the judgment should be given in a case where the right of parties were in actual dispute upon which their decision would be strictly judicial and binding. I could perceive plainly that the difficulties, which it was supposed might be met with in the Judicial Committee, must have been suggested since the correspondence of 1850, and that they were deemed of some importance at the Colonial Office. A brief interview with Sir R. Bethel, the Attorney General, led me to believe that he thought, that after so long an enjoyment on the part of the Hudson's Bay Com-

pany, it was not by the Crown that the validity of their charter should be brought into discussion. From all this, I drew the conclusion, that, unless I could raise a question of legal right in which the Province of Canada had a direct interest, there was very little prospect of any reference to the Judicial Committee, while I felt a very strong conviction that no other judgment would be satisfactory on the validity of the Company's claims, or if adverse to the claims of the Province, (which, however, I did not believe possible) would receive a respectful submission.

With this impression, I considered that vague and indefinite as the southern boundary of the territory mentioned in the Company's charter is, the limits of the Province of Canada in that part are made dependent on it. I observed also, that this same boundary had been a matter of lengthened dispute between Great Britain and France, finishing only by the treaty of 1763. That at various periods subsequently to 1670, and to 1750, the Hudson's Bay Company had been called upon to point out the extent of their territorial claims under the charter, and to define the boundary which they claimed, and that on no one occasion during all that period, had they advanced the claim they now insist upon, namely, that the charter gave them the ownership of all lands, the water from which flows into the Hudson's Bay or Straits, and therefore extending as far as the head waters of the Red River, and east and west of that stream to the sources of its tributaries, though the Ashburton treaty has, of course, disposed of so much of that claim as lies south of the 49th parallel of latitude. And I prepared a memorandum on the subject, which I forwarded to the Secretary of State for the Colonies in a letter, a copy of which letter and its enclosure was transmitted to your Excellency, in my despatch of the 8th of May, 1857.

My object was to place the question on a footing by which the Crown would be called upon to determine the boundary between the Colony and Rupert's Land, as it is styled in the charter of 1670, and for its own information and guidance, would find it desirable, I might almost say indispensable, to obtain the advice and opinion of the Judicial Committee of the Privy Council. Of the right of the Crown to take this course under the Imperial statute, 3 and 4 William IV., there can, I apprehend, be no doubt. It is treated as clear by Mr. Macqueen, in his "Practice of the House of Lords and Privy Council," and on such a reference, I presume, the Judicial Committee would simply make a report, and not pronounce a judgment; upon which report Her Majesty might issue an order in Council, establishing the boundaries, in virtue of her prerogative Royal. Such a declaration would, I venture to submit, meet with respect and obedience in all Her Majesty's Courts of Justice. But if there was a shadow of doubt of the full authority of such an order, a declaratory Act of Parliament, founded upon it, or upon the report of the Judicial Committee, would set the question at rest for ever. I thought that counsel for the Province, as well as for the Hudson's Bay Company, would be heard, and I did not see how it would be possible to exclude the former from contesting the validity of the charter, when it was to be used for the purpose of limiting Canada on the north.

Parliament was opened on the 8th of May, and a Committee of the House of Commons was named to continue the enquiry. Before that Committee met, I received, (the 12th May) the minute of your Excellency in Council, of the 27th April preceding, which expressed a fixed opinion that no immediate charge should be taken of any territory in a form which would throw upon the Province the cost of administration and defence, while in an unsettled state, until the sanction of the Provincial Legislature was obtained, and that in the meantime I should see "1st. That "Canada should be secured the reversion of such territory North and West of Lake "Superior as experience may show to be fit for settlement, contingent on the opening of such communication from Canada as may prove sufficient to allow their "future union with the Province. 2nd. That immediate steps should be taken by

"Her Majesty's Government to prevent the absorption of the territory west of Lake Superior by unauthorized emigration from the United States. 3rd. That every facility should be secured for enabling Canada to explore and survey the territory between Lake Superior and the Rocky Mountains—and if the Provincial Legislature think fit to provide the means of so doing, no-obstacle should be thrown in the way of the constructing of roads or the improvement of water communication, or the promotion of settlement beyond the line supposed to separate the territory of the Hudson's Bay Company from that of Canada."

The first meeting of the Committee was on the 15th May, when no business except the appointment of the Chairman was transacted. I submitted the names of several witnesses whose evidence I thought would be found valuable—and I received an unofficial intimation of the intention of the committee to call me before them as a witness. I saw at once the embarrassing position in which this would place me—for it must have been well known that I had no personal knowledge of the territory—and I was therefore certain that my opinions and not my knowledge must form the subject of examination—and that questions might very easily be put to me, which it would be difficult, bearing in mind the restrictive character of my instructions, to answer. I almost determined—if the matter were in any way left open to me, as a matter within my own discretion—not to appear as a witness—though I felt such a course might be open to great misconstruction, and might create impressions unfavourable to the interests of the Province. However, at the meeting of the Committee of 21st May, the chairman expressed his opinion that I should be called before them, in which all present apparently concurred, and it was formally stated to me that the Committee desired my attendance at their next meeting. I took an opportunity, as soon as the Committee broke up, of stating to the Chairman my objections—but (if he felt there was any force in them) he left me no reason to doubt that in his opinion I should comply with the expressed desire of the Committee.

In the meantime, however, I had learned through the public press—that an expedition had been set on foot to conduct a geographical survey through a part of the territory in question. I addressed a letter on this subject to the Secretary of State for the Colonies (16th May, 1857—separate No. 5.)—a copy of which I enclosed to your Excellency in my despatch of the 21st May. To this I received a reply from Mr. Merivale one of the Under-Secretaries of State, bearing date the 25th May—and on the 27th May, I received a reply from Mr. Fortescue, the Parliamentary Under-Secretary of State for the Colonies, in reply to my letter of the 6th May, copies of which were transmitted by me to Canada, in my despatch of the 29th of the same month. (Separate, No. 6.)

On the 28th day of May I was examined before the committee. I took particular care to have it understood that I had no instructions to appear before them as a witness. Examined repeatedly as to my individual opinions on the subjects of inquiry; I could not avoid stating what I sincerely thought—but, while I felt bound to reply without reserve, I was solicitous to impress that I stood alone responsible for such views, that I pretended no authority to advance them in the name of the Province—and that they were in some instances opposed to what I believed many people in the Province thought.

I addressed a reply on the 5th of June to the letter which I had received from Mr. Fortescue on the subject of the suggested reference to the Judicial Committee of the Privy Council—and in this letter I took occasion to present as succinctly as possible—the points which I thought it most material for the interests of Canada should be treated in the Report of the Committee, and disposed of by Parliament. I felt the more imperatively called upon to take this step at once—lest any answer of mine in the course of a lengthened examination should give rise to misapprehen-

sion as regarded the claims of the Province. A copy of this letter was sent by me to the Provincial Secretary in my despatch of the 5th of June. I received on the evening of the 6th of June a note from Mr. Labouchere's private secretary, respecting my official letter of the 5th of June, to which I replied on the following Monday, and I forwarded copies of those two notes in my despatch to the Provincial Secretary of the 12th of June.

To this despatch I beg to make especial reference. It contains a *resumé* of my reasons for pressing the reference to the Judicial Committee—a statement of the boundaries which, for the present, and without reference to the legal adjudication, I was of opinion might answer; as also, a recapitulation of some of the proposals made by me for dealing with the questions before the Committee and the Government.

On the 3rd July I received a copy of the evidence taken before the Select Committee of the House of Assembly, which I immediately transmitted to Mr. Labouchere, as chairman of the Committee. It is printed in the appendix to the Report of that Committee.

In the meantime (as I learned through private channels of information,) the Attorney and Solicitor Generals had been called upon to report their opinion whether the Crown could lawfully or constitutionally raise for legal decision all or either of the following questions: 1. The validity, at the present day, of the charter of the Hudson's Bay Company; 2. The validity of the several claims of territorial right—of government—of exclusive trade and taxation claimed by that Company; 3. The geographical extent of this territorial claim, supposing it to be well founded to any extent. And, if the Crown could do so—then to state the proper steps to be taken, and the proper tribunal to be resorted to, and whether the Crown should act on behalf of the local Government of Canada, as exercising a delegated share of the Royal authority, or in any other way. And, if the Crown could not properly so act, whether they saw any objections to the questions being raised by the local Government of Canada, acting independently of the Crown, or by some private party, in the manner suggested by the law officers in 1850—the Crown undertaking to bear the expense of the proceedings.

I was on the 11th of July favored by Mr. Labouchere with a copy of the report in reply, but the communication to me was marked "private and confidential" (8th July, 1857.) A few days prior to its receipt, however I addressed a letter to Mr. Labouchere again pressing for a reference and decision on the subject of boundaries. A copy of this letter was transmitted by me to the Provincial Secretary on the 10th July.

In reference to the opinion of the law advisers of the Crown, I cannot abstain from remarking that it does not appear to me to meet the questions submitted. The general question put was, whether the Crown could lawfully or constitutionally raise for legal decision,—1. The validity of the charter at the present day. 2. The validity of the several claims of territorial right—of government exclusive trade and taxation insisted on by the Company. 3. The geographical extent of the territorial claim, supposing it to be well founded to any extent.

1. As to the validity of the charter. The answer in fact is (if I do not misunderstand it) the Crown cannot justly raise this question, because, taking into consideration the enjoyment that has been had under the charter, and the recognition made of the right of the Company under various acts, the judgment of any tribunal ought to be in favor of upholding it, although, if principles which govern a charter of recent date were applied, it must be deemed invalid. With great submission this appears to me to savour much more of an opinion on what should be a result of a reference—than an opinion on the power of the Crown to refer. And, if this be the true sense of the answer, then it is difficult to avoid the reflection that such a

determination, coming from a high and impartial tribunal, would carry more weight and conviction with it than an opinion, which, if followed, prevents such an adjudication being obtained. And the adoption of that opinion by the Government becomes virtually an assertion by the Government of the validity of the charter—while the argument, resting upon long enjoyment, and parliamentary recognition, seems almost to involve the admission of its invalidity.

2. The answer to the second branch of the inquiry is open, as appears to me, to similar objection. If it be admitted—and the opinion given involves the admission—that rights of Government, taxation, exclusive administration of justice, or exclusive trade, cannot be legally insisted on by the Hudson's Bay Company, as having been legally granted by the Crown—and if, as is notoriously the fact, the Hudson's Bay Company have assumed and asserted all these rights—the answer to the question put, ought, I humbly conceive, to have been that the Crown could legally and constitutionally raise this question for legal decision—instead of anticipating the judgment by an opinion that the charter should not be deemed invalid, because it professes to grant those powers, inasmuch as to a limited extent those powers may be lawfully used.

I cannot say the result of the reference so far was any matter of surprise to me. On whatever grounds the opinion might be rested, I had, as I have already stated, satisfied myself that there would be no facility afforded for raising either of these questions, and I was the more fully satisfied that I had taken a right course in submitting a proposition which it was impossible to negative on any such reasoning as the report contains in regard to the first two questions.

Even on that proposition however, the opinion given hardly appears to me to afford a full answer.

I concede fully that the Crown could not, of its inherent authority, and by any mere command, bring the Province of Canada and the Hudson's Bay Company as two contending parties before the Judicial Committee of the Privy Council to submit their respective claims for final decision. For this purpose the consent of both parties would be indispensable. But I fail to perceive, and on this point the opinion throws no light, that the Crown could not obtain the opinion and advice of the Judicial Committee upon all the existing facts as to the boundaries between Canada and the territories of the Hudson's Bay Company, supposing their claim "to be well founded to any extent," and that such opinion and advice might be made the foundation for determining those boundaries with the aid, if requisite, of a declaratory Act of Parliament. It has not yet been denied on any hand that the Crown can legally and constitutionally take that course, and I continue to think this is a more safe and will be a more satisfactory mode of determination than a quasi-judicial enquiry, in which the Province of Canada is to be made to assume the position of a plaintiff in ejectment, and in that character to prove a title to turn the Hudson's Bay Company out of an imaginary possession.

The Committee held their last sitting for the examination of witnesses on the 23rd June. Their next meeting was on the 20th July with closed doors, and so their meetings continued until their report was finally adopted. Before this I had several interviews with Mr. Labouchere, in which, among other things, the opinion of the law advisers of the Crown was spoken of. These interviews, as I was informed by a letter of Mr. Under-Secretary Merivale, rendered it unnecessary, in Mr. Labouchere's opinion, to address any written reply to my letter of the 8th July. The substance of what took place at these interviews is contained in my last despatch to the Provincial Secretary. I felt it right to send a copy of this letter without delay to Mr. Labouchere in order that he might be fully aware in what light I viewed, and how I had understood what passed between us. It will be observed that Mr. Labouchere made no direct proposition to me, founded on the report

of the law advisers of the Crown. On the contrary, so far as I could understand, though I may be in error, I thought him much more desirous of seeing the points in doubt or dispute, settled by some compromise than of having them left for legal adjudication, while I represented that a determination of the rights conferred by the Charter would tend to facilitate the settlement of the other questions which were raised. I had the opportunity of again pressing the necessity that I thought existed, that the authority of the Hudson's Bay Company should at once be put an end to, over such portions of the territory as might be ceded to Canada. And I took occasion, when the question of compensation to the Company was referred to, to state my unqualified opinion that Canada would never consent to pay any portion of it.

The report of the committee confirms my early impression of the opinions entertained as to the future Government of Vancouver's Island and the territory west of the Rocky Mountains. The importance of Vancouver's Island seems to be fully estimated, and the necessity of administering its Government and providing for its settlement otherwise than by the agency of the Company. That colony is also viewed as the most convenient head-quarters for settlements on the adjacent main land, especially about Frazer's river and Thompson's river, (on or near which it is said there are indications of gold,) and generally as far as the Rocky Mountains. The distance, judging from maps, and taking a direct line without reference to the difficulties of communication and necessary divergencies, by rivers and lakes, are from Victoria on Vancouver's Island to the junction of the Frazer and Thompson rivers, 180 miles; thence to Fort Thompson, 80 miles; thence to Mount Brown 170 miles; thence to Red River, at Fort Garry, near 900 miles; and thence to Fort William, 300 miles, or 500 miles if the canoe route is followed. The Frazer river empties itself opposite the south-easterly part of Vancouver's Island, a little to the north of the 49th parallel. The parts of this country best fitted by climate and soil for agricultural settlement, as well as the points where it was asserted gold had been discovered, were, according to the evidence of Mr. Cooper, situated upon these rivers. They are also not far from the boundary line of Oregon. The greater facilities of obtaining information and of speedy communications and intervention (if intervention were necessary), from Vancouver's Island to these rivers and the country they drain had very great influence on the minds of those who were of opinion the settlement and protection of these parts of the territory should be managed by the Government of that Colony. On the other hand, there were those (and I understand Mr. Roebuck to be strongly of that opinion,) who thought that the territory lying between the Province of Canada and the Pacific far too extensive to be united to Canada and Vancouver's Island, but that it should be divided into several Colonies to be settled under the authority of the British Crown, with local Governments which might in time form part of a confederacy of the British possessions on the North American continent, maintaining their connection with the British Empire.

There were not wanting some who would have been disposed to cede to this Province the territorial right of the Crown on condition that Canada should relieve Great Britain of all future charge of its Government, defence and administration, and take upon its own resources the burden of any arrangement which the claims of the Hudson's Bay Company might give legitimate rise to. The express instructions I had in no way to pledge the Province to incur any expenditure until the sanction of the Provincial Parliament was obtained, was sufficient without any other reason to prevent my entering upon this topic, to which I may be permitted to add, I saw what appeared to me to be the gravest objections. I refer to these matters in connexion with the amendments which were made in the draft report first submitted to the Committee, to show that there was a wide difference of opinion in that body as to the best mode of dealing with the subject under consideration.


The recommendation of the report was in effect :—

1st. That the Province should be free to annex to her territory such portions of the land in her neighbourhood as may be available to her for the purposes of settlement—with which lands she is willing to open and maintain communication, and for which she will provide the means of local administration. The districts on the Red River and the Saskatchewan are those particularly referred to, and the recommendation, therefore, involves the giving to Canada power to assume the whole of the extensive territory bounded on the south by the United States, and on the west by the Rocky Mountains, and as far north as the soil and climate fit for agricultural settlement extends, leaving to Her Majesty's Government to effect any necessary arrangements with the Hudson's Bay Company, whose authority over the country annexed to Canada would entirely cease.

2nd. The re-assuming by the Imperial Government of Vancouver's Island, and the making provision for developing the natural resources of that colony, and extending it over any portion of the continent to the west of the Rocky Mountains, on which permanent settlement may be found practicable.

3rd. Subject to these recommendations the continuance of the privilege of exclusive trade to the Hudson's Bay Company.

On this latter recommendation, I would remark, that for the reasons set forth in my despatch of the 27th March, 1857, I thought temporary renewal of the license of exclusive trade would be advisable. It also appeared to me, that to throw that trade at once and unreservedly open, would be, in effect, to give an immediate advantage to the fur traders from the United States, while its benefit to the people of Canada was remote and contingent. For the former, with establishments near the frontier (at Pembina, for instance,) already obtaining a considerable number of furs from the British territory, would be ready at once to extend their operations—to enter into active arrangements with the half-breeds and Indians, and to lay the foundation for an immediate connexion with them, and so to gain a start of our own people that must be extremely disadvantageous to the latter. And there is a further danger—the apprehension of which arises from an answer given by the Right Hon. Edward Ellice, in his examination before the Committee, when he says in reference to the “servants” of the Hudson's Bay Company in the interior,—“Even if it was necessary, and if the attempt were made to deprive them,” (as for instance by taking away the exclusive right of trade) “of what are, in short, their sole means of existence, they would find means, either by communication with America or somewhere else” (possibly Russia, whose possessions join the British territories on the north), “to carry on the trade and exclude every other party.” This warning or covert menace (for it is capable of that construction though unintentionally) from a gentleman who must know the disposition of those of whom he speaks, and the influence their intercourse with the Indians has given them, is not to be overlooked, and it will not have the less point and significance when it is remembered that though settlements within the Oregon Territory had been formed under the protection of the Hudson's Bay Company's “servants”; and though that Company had no chartered rights there, but only such privileges as the exclusive right of trade gave them; yet when the Ashburton treaty was made, and the North Branch of the Columbia river yielded up to the United States, the transfer of these settlements created no difficulty, while an article was inserted into the treaty by which the possessory rights of the Company were to be respected, under which article the Company have now a great claim in discussion “before the Congress for indemnity for the surrender of their possessory rights.” These reflections are calculated to add to the importance of interposing a body of British settlers between the line of 49° North, and the most valuable fur-bearing country, before the privi-



lege of exclusive trade is entirely abrogated, and strengthen the suggestions offered in favor of a temporary renewal of the license for exclusive trade.

The report points also to the necessity of making communications to the Government of Canada—as well, I apprehend, on the subject of boundary, as well as respecting such other arrangements for the settlement and administration of the territory as may be deemed expedient. Its language and expression evince a disposition to sustain and advance the welfare of the Province, and to strengthen its position as a part of the British Empire.

I cannot better conclude this report than by recapitulating the points which, appearing to me to come within the scope of my instructions, seemed to be of the greatest present importance, and were presented by me in that light in my communications with the Home authorities.

1. The determination of the proper limits between Canada and the Territories (whatever they may be) belonging to the Hudson's Bay Company.

2. The marking out the boundary between the possessions of Great Britain and the United States to the Pacific.

3. The adoption of measures to protect the possessions of the Crown from intrusive settlement.

4. The grant to Canada, for a fixed period, powers to explore and survey, to open communications by land and water, and to lay out and settle townships to become, as fast as they are laid out and settled, integral portions of the Province, and over the territory in which Canada is to possess these powers, to abrogate at once every right and privilege of the Hudson's Bay Company, excepting the right to their factories and other buildings erected within the same, with a sufficient portion of land immediately attached to such factories, &c., necessary for their convenient enjoyment and occupation.

5. The making a provisional arrangement for the Government of the Red River Settlement entirely independent of the Hudson's Bay Company, until that settlement can be incorporated with the Province of Canada.

6. The reservation to the Crown of a power to lay out a line of railway, and to use all lands necessary for that purpose throughout the whole territory to the Pacific Ocean.

All which is respectfully submitted.

W. H. DRAPER.

---

TORONTO:

PRINTED BY JOHN LOVELL, CORNER OF YONGE AND MELINDA STREETS.